DISSENT OF CARL WOOD

PACIFIC GAS AND ELECTRIC AND OILDALE ENERGY LLC.

In this situation, our ability to find the proposed contract amendments reasonable rests entirely on our judgment of litigation risks. However, despite requests from the ALJ, PG&E expressly refused to provide its assessment of litigation risk. We are left with only the most superficial argument, and the ALJ concluded, I think appropriately, that PG&E had not made a persuasive showing.

Let's examine PG&E's argument, such as it is. According to the company, the risk is that a court may find both of the following:

First, that the existing contract between PG&E and Oildale should be terminated due to PG&E's failure to pay for power from Oildale during the height of its financial crisis; and

Second, that the appropriate damages would be for PG&E to reimburse Oildale for lost future payments under the contract.

On its face, this argument is not credible. Even if a court were to conclude that the contract could be terminated, the court would look for opportunities to mitigate the damages before assigning an award to Oildale. Here, the mitigation opportunity is self-evident. Oildale does not have to walk away from its contract and it can continue to receive all of the money it claims it would otherwise lose. Since PG&E refuses to back up its claim of litigation risk, the record is devoid of a reason to conclude that the self-evident is not true.

Is there some possibility that a rogue judge would fail to reach these conclusions and that this result would survive appeal? Anything is possible. But all of this analysis ignores the underlying question as to whether PG&E would be able to pass through to ratepayers any losses it may realize as a result of Oildale's litigation. There is nothing offered in this record to support such an assumption.

The question remains whether the type of outlying possibility of exposure that ratepayers face here is enough of a reason to pay ransom to the QF.

I think the answer to that question lies not just in the facts of this case, but in the more general interests that this commission must strive to protect. If we approve these amendments, and the decision of the majority has done just that, we are sending a message that all of the QFs in this state will hear loud and clear. If you want to improve your revenue stream, then bring a lawsuit. A good one is preferable, but any lawsuit will do. As long as there is any argument for a court to hang its hat on, that lawsuit will add value to your relationship with the utility. The Commission will support you if ask for more money.

It is against the interests of the state to promote more lawsuits. It is against the interests of the ratepayers and the utilities to encourage them. The applicant has not made a sufficient showing to support its claim that the Commission should act in response to this lawsuit, this time.

In addition to reaching what I find to be an unsupportable conclusion, however, the decision of the majority has other serious flaws. First, the order misapplies three prior Commission decisions. It cites those decisions to support the argument that the Commission should go out of its way to support QFs in distress. It cites one decision in which the Commission ordered the utilities to make contractual payments to QFs, another in which the Commission provided a limited period for automatic approval of certain specified amendments, and a third in which the Commission declined to extend the period for automatic approval. None of these decisions stands for the proposition that we should approve uneconomic QF contract amendments. To the contrary, the last of the three decisions stands for the proposition that amendments will not be approved unless

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they benefit ratepayers. Second, the decision remarks on PG&E's failure to provide evidentiary support for its arguments about litigation risk but then concludes:

> "Nevertheless, we are able to determine that PG&E and Oildale's litigation assumptions and estimate of potential litigation costs when compared to the premium energy costs in the Third Amendment are reasonable."

The majority never bothers to explain how it has reached this conclusion. Other than this declaration, there is no discussion. Is this anything more than an expression of faith? If we rely on the text of the alternate, we just don't know.

Third, the decision states that the amendments would provide the state with a valuable resource, which will enhance electric grid reliability and mitigate against blackouts. Again, no evidence. Just an expression of faith. What do we know on the record about Oildale's actual impact on the grid, whether it might actually contribute to congestion or other grid problems? By the same token, how do we know that it will help mitigate against blackouts?

Our previous decision allowing for certain five-year modified contracts did not create an ongoing right to these above-market terms. The decision of the majority seems to assume that Oildale has a right to above-market rates. To the contrary, it is PG&E's obligation, on behalf of itself and Oildale, to demonstrate that special terms are appropriate and beneficial to ratepayers. The majority decision reaches a result for which it simply fails to provide sufficient justification or even explanation.

/s/ CARL WOOD
Carl Wood
Commissioner

San Francisco, California
August 22, 2002